

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Toh Eng Lim, D.D.S.
License No. D9074

**STIPULATION AND ORDER FOR
CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, and to take disciplinary action when appropriate.

The Board received a complaint(s) against Toh Eng Lim, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s). Based on the information the Committee received in those complaint(s), the Committee held a conference with Licensee on October 15, 2004. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that Licensee does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

Substandard Diagnostic and Operative Care / Recordkeeping

1. Licensee failed to adequately document pertinent information and/or provide appropriate diagnostic and operative care when providing dental treatment to patient 1. Examples include the following:

a. Between February 7, 1995 and April 22, 1997, Licensee provided emergency treatment to patient 1.

b. On April 22, 1997, Licensee provided an initial examination and a prophylaxis to patient 1, and took full mouth radiographs. Licensee prepared a treatment plan for patient 1; however:

1) Licensee failed to document his diagnosis and/or provide appropriate treatment to an abscess on tooth #4, as seen on the April 22, 1997 full mouth radiographs. On June 19, 1997, Licensee placed a MOD amalgam restoration on tooth #4. On June 26, 1997, patient 1 presented with a broken lingual cusp on tooth #4 and decided to have Licensee extract this tooth.

2) Licensee failed to document his diagnosis and/or provide operative treatment to the radiolucent area on the mesial aspect of tooth #13, as seen on the April 22, 1997 full mouth radiographs. On May 20, 1997, Licensee placed a DO amalgam restoration on tooth #13 which later required endodontic treatment on May 26, 1999.

3) Licensee failed to document his diagnosis and/or provide operative treatment to the radiolucent area on the mesial aspect of tooth #31, as seen on the April 22, 1997 full mouth radiographs. On June 19, 1997, Licensee placed a D amalgam restoration on tooth #31. On July 21, 1998, Licensee placed a MODL amalgam restoration on tooth #31 indicating in the patient's progress notes that decay was deep and lingual cusps were

cracked off. Licensee informed the patient that tooth #31 might need endodontic treatment and a crown. Patient 1 decided to have Licensee extract tooth #31 on September 14, 1998.

c. On April 27, 1999, Licensee provided a periodic examination and a prophylaxis to patient 1, and took two periapical radiographs. Licensee prepared a treatment plan for patient 1 noting that tooth #3 had MOD decay as seen on the April 27, 1999 periapical radiograph. However, Licensee failed to provide timely operative treatment and/or document that he informed the patient of the risks of delaying treatment to tooth #3. On April 11, 2002, Licensee placed a MODL amalgam restoration noting the deep decay and possible need for future endodontic treatment.

Substandard Endodontic Treatment / Recordkeeping

2. Licensee failed to adequately document pertinent information and/or provide appropriate endodontic treatment when providing endodontic care to patient 1. Examples include the following:

a. Prior to providing endodontic treatment to patient 1, Licensee failed to document a treatment plan for teeth #10 and #12 and obtain the patient's informed consent for treatment for teeth #7, #10, #12 and #13.

b. Licensee failed to obtain diagnostic pre-operative and/or post-operative radiographs when providing endodontic treatment to patient 1 as follows:

1) Licensee failed to obtain a post-operative radiograph of tooth #7 on May 5, 1998.

2) Licensee failed to obtain a pre-operative radiograph of tooth #12 on May 3, 2002.

3) Licensee failed to obtain a pre-operative radiograph of tooth #13 on May 26, 1999.

c. Licensee failed to perform appropriate diagnostic evaluations of the pulpal and periradicular status of teeth and/or document the pulpal and periradicular diagnosis before providing endodontic treatment to patient 1 on the following teeth and dates: #7 on April 21, 1998; #10 and #12 on May 3, 2002; #13 on May 26, 1999; and #21 on September 18, 1997.

d. Licensee failed to document and/or use rubber dam isolation when providing endodontic treatment to patient 1 on September 18, 1997, April 21, 1998, May 26, 1999, and May 3, 2002.

e. In providing endodontic treatment to patient 1, Licensee failed to properly obturate the canals of the teeth as evidenced on post-operative periapical radiographs. The quality of the obturation relative to canal taper is substandard and/or lacks density indicating the presence of voids. Moreover, the obturation of teeth #12, #13 and #21 is short by approximately 5 mm or more as seen on the May 13, 2002, May 26, 1999, and October 2, 1997 radiographs, respectively.

f. Licensee failed to consistently document endodontic treatment information such as patient 1's chief complaint, working length measurements, medications used and type of obturation material used when providing endodontic treatment on the teeth described in Paragraph c. above.

Substandard Periodontal Treatment / Recordkeeping

3. Licensee failed to adequately document pertinent information and/or provide appropriate periodontal treatment when providing periodontal care to patient 1. Examples include the following:

a. Licensee failed to appropriately document and/or treat patient 1's periodontal status or to refer the patient to a periodontist as follows:

1) On April 22, 1997, Licensee provided an initial examination and a prophylaxis to patient 1, and took full mouth radiographs. The results of the periodontal probing were on two separate periodontal examination forms and were contradictory for patient 1: one form indicated that all pockets were within normal limits (WNL); and the other form indicated specific pocket depths with 4mm pockets on the distal aspect of teeth #3 and #13 and the mesial aspect of teeth #4 and #15.

2) On April 27, 1999, Licensee provided a periodic examination, a prophylaxis, and took two periapical radiographs for patient 1, but failed to perform and/or document a periodontal probing.

3) On March 21, 2000, Licensee provided a periodic examination and a prophylaxis to patient 1, and took two bitewing radiographs. The results of the periodontal probing indicated the patient had 4mm pockets on the distal aspect of teeth #3 and #30, and all remaining teeth had pockets within normal limits (WNL).

4) On May 17, 2001, Licensee provided a periodic examination, a prophylaxis, and took two bitewing radiographs on patient 1, but failed to perform and/or document a periodontal probing. In addition, the patient's billing history indicated the date for these services as June 7, 2001.

5) On January 6, 2003, Licensee provided a periodic examination, a prophylaxis, and took two periapical radiographs on patient 1, but failed to perform and/or document a periodontal probing.

6) On April 3 and 22, 2003, periapical radiographs showed patient 1's periodontal status indicated bone loss around teeth in the upper left area and lower anterior area.

Substandard Oral Surgery Treatment

4. Licensee failed to provide appropriate oral surgery to patient #1. On September 14, 1998, Licensee extracted tooth #31 on patient 1, indicating in the patient's progress notes that the root tips had been removed. However, Licensee failed to remove the distal root tip of tooth #31 as seen on the September 14, 1998 and March 21, 2000 bitewing radiographs. In addition, patient 1's subsequent provider noted the need to remove a residual root for tooth #31 in her treatment plan.

Improper Billing

5. Licensee has engaged in unprofessional conduct relative to the practice of dentistry when he billed for dental services on a date different from the date the dental services were actually rendered, and/or when he used other improper billing procedures for services rendered. Examples include the following:

a. On November 18, 1997, Licensee placed a DFI composite restoration on tooth #7 for patient 1, but submitted a claim form which indicated the date of service was January 6, 1998. Staff noted on patient 1's progress notes "bill in Jan. '98 per Dr. Toh."

b. On September 14, 1998, Licensee extracted tooth #31 for patient 1 and took a periapical radiograph, but submitted a claim form which indicated the date of service was January 5, 1999. Licensee noted on patient 1's progress notes "to bill in Jan. '99 Pt is maxed out per pt's request."

c. On November 15, 2001, Licensee cemented a prefabricated post/core on tooth #5 for patient 1 and took a periapical radiograph, but submitted a claim form which indicated the date of service was January 10, 2002. Licensee noted on patient 1's progress notes "Ins maxed out for 2001" and "hold till 2002."

Substandard Radiographic Diagnosis / Recordkeeping

6. Licensee failed to take a sufficient number of radiographs for the purpose of assessing patient 1's dental health. Examples include the following:

a. On April 22, 1997, Licensee failed to take a complete set of full mouth radiographs to adequately diagnose patient 1's dental health. Without obtaining a complete full mouth series of radiographs, Licensee documented twelve of patient 1's teeth that needed extensive restorative treatment.

b. On April 27, 1999 and January 6, 2003, Licensee had taken only two periapical radiographs of patient 1's teeth at each of the aforementioned examination and prophylaxis appointments.

Additional Substandard Recordkeeping

7. Licensee has failed to make or maintain adequate records for patient 1. Examples include the following:

a. Licensee failed to consistently document his diagnosis for dental treatment, an updated medical history, a proper treatment plan, and informed consent for treatment for patient 1.

b. When documenting the treatment provided to patient 1, Licensee failed to consistently indicate that he was the dental provider by noting his name or initials in the patient's treatment record.

c. On June 17, 2003, Licensee prescribed 24 tablets of Augmentin (875 mg) for patient 1 without noting in the patient's chart the directions for use or without retaining a copy of the prescription in the patient's chart.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 B (repeated performance

of dental treatment which falls below accepted standards); Minn. Stat. §150A.08, subd. 1(6) and Minn. R. 3100.6200 A (personal conduct which brings discredit to the profession of dentistry); Minn. R. 3100.9600 (failure to make or maintain adequate dental records on each patient) and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order which places CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

CONDITIONS

1. Coursework. Licensee shall successfully complete the coursework described below. All coursework must be approved in advance by the Committee. Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this stipulation and order. If Licensee attends an undergraduate or graduate dental school course, Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses with a grade of 70 percent or a letter grade "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course about Licensee's needs, performance and progress. None of the coursework taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minn. R. 3100.4100, subparts 1 and 2 prior to January 1, 2005, or Minn. R. 3100.5100, subpart 2 after January 1, 2005. The coursework is as follows:

a. Within nine months of the effective date of this order, Licensee shall complete the treatment planning/recordkeeping course entitled "Dental Patient Management: Dental Records and Treatment Planning Fundamentals" offered by the University of Minnesota.

b. Within nine months of the effective date of this order, Licensee shall complete an individually designed course in ethics and decision-making offered by Dr. Muriel Bebeau at the University of Minnesota Dental School. Licensee's signature on this stipulation and order is authorization for Dr. Bebeau and the Committee to communicate before, during, and after Licensee takes the course about his needs, performance, and progress.

c. Within nine months of the effective date of this order, Licensee shall complete a minimum of 6 hours instruction on endodontics which includes a hands-on component, at the University of Minnesota or an equivalent course.

2. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

a. Reports on All Coursework. Within 30 days of completing any coursework, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, if the course is a graduate or undergraduate dental school course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing what Licensee learned in the course and how Licensee has implemented this knowledge into Licensee's practice. Licensee's report shall be typewritten in Licensee's own words, double-spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report. The report for recordkeeping class(es) shall

address all topics addressed in the course(s) and shall include sample recordkeeping forms that Licensee has begun to use in his practice.

3. Office Inspection for Recordkeeping. Within six months of completing the treatment planning/recordkeeping course referenced above, Licensee shall submit to the Committee copies of five randomly selected patient records as directed by the Board's representative which utilize what Licensee has learned in the recordkeeping course. The Committee shall review Licensee's patient records.

4. Jurisprudence Examination. Within 90 days of the effective date of this stipulation and order, Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 90 percent. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 90 percent, however, Licensee may take the examination only once each day. Within 10 days of each date Licensee takes the jurisprudence examination, Board staff will notify Licensee in writing of the score attained.

5. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during

normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

d. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

6. Removal of Conditions. Licensee may petition to have the conditions removed from Licensee's license at any regularly scheduled Board meeting provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the conditions and that Licensee is qualified to practice dentistry without conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this order.

7. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application

to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

8. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or a limitation on Licensee's practice, or suspension or revocation of Licensee's license.

9. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or

(2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

10. Attendance at Conference. Licensee attended a conference with the Committee on October 15, 2004. The following Committee members attended the conference: Freeman Rosenblum, D.D.S., Ron King, D.D.S., and Nadene Bunge, D.H. Assistant Attorney General Tamar Gronvall represented the Committee at the conference. Licensee is represented by Barbara A. Zurek in this matter, who has advised Licensee regarding this stipulation and order.

11. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

12. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of

the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

13. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

14. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank.

15. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

16. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee's legal counsel. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.


LICENSEE



TOH ENG LIM, D.D.S.

Dated: 11-20-04, 2004

COMPLAINT COMMITTEE



MARSHALL SHRAGG
Executive Director

Dated: 4/6/05, 2004

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records, and proceedings herein,

The terms of the stipulation are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing CONDITIONS on Licensee's license effective this 28th day of January, 2004. ⁵ md

MINNESOTA BOARD
OF DENTISTRY

By: Linda Boyum, RDA
LINDA BOYUM, R.D.A.
President